The Post-Mortem Use of Wealth

Daniel S. Remsen

POST-MORTEM USE OF WEALTH

INCLUDING A CONSIDERATION OF ANTE-MORTEM GIFTS

LEGAL POINT OF VIEW

BY

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ETHICAL POINT OF VIEW

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TO

THE MEMORY OF MY PARENTS

PREFACE

This book is designed to aid persons of large or small means to formulate plans for a wise use of their property after death. To such as possess a surplus not required for the use of their families, it will be found of service also in planning a judicious use of wealth which shall begin during life and continue after death.

As every plan for such use of property should be considered from two points of view, the book is divided into two parts. The first concerns what the possessor of property *can* do by means of a will or other instrument. The second concerns what he *should* do.

Being much interested in the legal aspect of the questions presented, and noting their economic importance, I have undertaken to set down a few guiding principles from that standpoint. In this work I have had the

assistance of my son, Allen H. Remsen, a student of this branch of the law. From the ethical point of view it seemed more fitting for others to speak.

I have been exceptionally fortunate in securing the co-operation of the eminent teachers of ethics whose names are connected with their several contributions. In this way, the subject is dealt with from different points of view and in a manner that cannot fail to be both interesting and helpful. I had hoped to secure an expression of opinion from Cardinal Gibbons, but owing to the pressure of other matters he could not find the time to prepare a paper. His point of view, however, is expressed in the following extract from his letter:

"Whilst a person should, of course, see that the members of his or her family are provided for, as charity begins at home, still, every one should set aside a certain amount which should be for the benefit of his unfortunate brethren, and thus a certain amount should always be devoted to charity."

Should this volume tend to encourage the living to give more serious thought to a most important subject, and aid them in planning a disposal of their property in a manner more beneficial to posterity, it will be a source of gratification to the writers who have contributed to these pages.

D. S. R.

New York, March, 1911.

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LEGAL POINT OF VIEW

PART I

Legal Point of View

NOTE.—For convenience these pages are in form directed mainly to gifts after death; they are, nevertheless, generally applicable to gifts taking effect during life, and to small as well as to large estates.

CHAPTER I

THE POWER OF WEALTH AFTER DEATH

THE *post-mortem* power of wealth is that power which may be exerted after death through a disposition of property by its owner for the benefit of family, friends, and society. The character of that power depends upon the law of the land and the terms of the instrument of disposition executed thereunder. The volume and extent of that power may or may not be in proportion to the size of the estate.

By grace of the laws of civilisation a man is permitted to do certain acts in his lifetime which give direction to his property after his death. In thus permitting the hand of the dead to exercise dominion over property the laws of civilisation deal very fairly with both

the living and the dead. There are, however, limits beyond which dominion over property after death cannot extend, which limits determine the validity and invalidity of all wills, settlements, and similar instruments. Such limitations are well marked in the law, but they are not always well understood as is shown by the unfortunate amount of disastrous litigation concerning estates of deceased persons.

With proper precaution there is no reason why any person of sound mind may not exercise an important dominion over his property after death. He may conserve his estate, direct its management, benefit the rising generation, avert litigation, and save his fortune from the blight of family discord. To this end he may make deeds of trust, declarations of trust, marriage or other settlements, a will, and the like. By means of one or more of these instruments the power of wealth after death may be made to tell for good or ill, depending upon the wisdom with which it is planned and the skill with which

it is prepared. If wisely directed, wealth may become a most efficient force after death; otherwise it may be a curse rather than a blessing. Like a dangerous explosive its value depends upon its use.

Wealth puts its possessor in the position of "the man behind the gun." His purpose may be likened to the target, his plan to the gunner's aim, the law of the land to the powder, the property to the shot, and the will or other instrument to the gun. The power in both cases takes effect at the target, and its effectiveness depends on the gunner, the charge, and the gun. If the giver has the wealth and the inclination he may construct an instrument that will accomplish during life or after death any legal and practicable purpose. The purposes for which such use may be suggested are innumerable. Some are legal; others, illegal. Some are practicable; others, impracticable. What purposes are both legal and practicable necessarily depend upon various considerations. Aside, however, from the Rule against Perpetuities

and certain minor limitations depending upon domicile or location of real property, a person may dispose of his wealth so as to accomplish during life or after death the purposes most near and dear to him.

The importance of the study of the ways and means by which the power of wealth may be projected into the future for the benefit of mankind increases in proportion to the wealth of the community and the requirements of society. Such a study suggests many considerations both legal and ethical requiring sound judgment and absence of caprice. It suggests obligations to family and society. It suggests a distinction between family requirements and surplus wealth. It suggests plans for public and private welfare. It suggests expedients for discouraging idleness and uselessness and for stimulating beneficiaries to activity in private life or public service. Indeed, such suggestions are capable of indefinite development and if properly worked into the plans of wills and kindred instruments, may be the turning point

in the life of many a young man. Wealth can assure leisure to its sons and the greatest opportunities are thus open to it to encourage them in the performance of such distinguished services as will render their names an honour to their families, their benefactor, and their country. To insure leisure to one's descendants without a worthy object in life is often to insure disaster, but to spur on one's descendants to worthy deeds should be one of the greatest delights that can come to the possessor of wealth. To plan for the good of future generations is more than a pleasure, it is certainly a great privilege, it should be considered a duty.

CHAPTER II

OWNERSHIP, A TRUST

EACH generation may be said to be a trustee for the next. In a sense we hold our property in trust for our children, our grandchildren, and the public good. The duty is to administer such property wisely during life, and after death to direct its disposition and use for the best interests of the living and of posterity yet unborn.

No man can own property and be free from the obligations which ownership implies. Such obligations always exist but they vary according to circumstances of family and estate. In some jurisdictions their binding force is subject to no tribunal except public opinion and the owner's conscience, while in others certain limitations are placed upon an owner's power over his property.

Public opinion does not usually concern itself with the *post-mortem* transmission of property but it invariably passes judgment where an unique opportunity to benefit mankind is presented by the possession of great surplus wealth. It also concerns itself where a man of small means, without sufficient reason, disinherits his own family and gives his property to strangers or to charity.

The ethical side of the *post-mortem* use of wealth is not, in the main, for legal consideration. It is, generally speaking, an affair of the conscience. It is capable of furnishing many fitting themes for the pulpit, the moral teacher, and the essayist. In Part II, of this volume a few of such topics are discussed by ethical teachers of the highest standing.

Truly this is an age unparalleled in history for its rapid changes in the sky lines of science, mechanics, morals, and finance. It is offering rare opportunities for the wise use of surplus wealth.

Modern patriotism leads not to the slaughter of enemies, but to the betterment of man-

kind; it leads to the devotion of personality, of money, or of both to the physical, mental, moral, and political development of the race. It means the doing of work that our Creator would have us do. It says to the passing generation, Let man be master and Mammon serve in life and after death.

CHAPTER III

POWER OVER PROPERTY LIMITED

From very ancient times man has sought to extend his dominion over property after death. He has sought to unite his fortune to his family for all time. So varied have been the devices employed for the entailment of property and so subtle have been the arguments in their support that the history of perpetuities, so called, may be said to be the history of English jurisprudence. The firm stand taken by the courts in prescribing limitations on the owner's power over property after death resulted in what is known as the Rule against Perpetuities. The limits of that power over property and the basic principles of the rule were fairly well settled more than a century ago.

In the latter part of the eighteenth century the Rule against Perpetuities played an important part in a famous case involving the validity of the will of Peter Thellusson, a multi-millionaire merchant of London. In order to perpetuate his name he gave the principal part of his estate to trustees and directed the income to be accumulated and added to the capital and invested in lands during the lives of such of his sons and their descendants as should be living at the time of his death. On the death of the last survivor he directed that his trust estate be divided and one part be then conveyed in tail male to the eldest living male lineal descendant of each of his three sons. Thus he deprived all living descendants of any use whatsoever of the bulk of his property. After one of the hardest fought legal battles on record this will was finally sustained. It resulted, however, in the subsequent passage by the English Parliament of what is known as the "Thellusson Act," whereby the accumulation of income is now limited in England to the

minority of infants or the term of twenty-one years.

In our time we have a notable but far less extreme example of the way in which property may be tied up and the income accumulated in the will of the late Marshall Field. If it were not for the enormous proportions of the estate it is doubtful if the plan of Mr. Field's will would have attracted any special attention, much less criticism. It differs very materially from the Thellusson will which tied up the estate for many lives and under which no descendant living at the time of the testator's death could ever receive any part of the trust estate or any income therefrom. The only persons to be benefited were certain male descendants to be born after Thellusson's death. The Field will, on the other hand, ties up property only during the lives of two grandchildren with a possible additional period of twenty-one years. The accumulation of income begins to decrease when his grandsons attain the age of thirty years and ceases when they become forty-five. When the elder

grandson attains the age of fifty years each comes into possession and ownership of his portion of the estate.

As the Common Law Rule against Perpetuities exists in Illinois, Marshall Field was at liberty to make substantially a duplicate of the Thellusson will. This same rule prevails quite generally throughout the United States and permits property to be tied up *not* longer than during the lives of any number of designated persons living at the time of the testator's death and twenty-one years after the death of the last survivor. In a number of States, however, the rule has been more or less modified by statute by cutting off the term of years, by limiting the number of lives, or by shortening the term of accumulation. In California, Idaho, Indiana, Montana, and North and South Dakota the term of years has been eliminated; in New York, Michigan, Minnesota, and Wisconsin the rule is limited to two lives; while in many States income cannot be accumulated except during the minority of a beneficiary.

Other important limitations are found in some jurisdictions. Such, for example, are statutes of some States designed to prevent a husband or wife from willing away from the other or from their children more than a certain proportion of his or her property and in certain cases to prevent the giving of more than a specified portion to charities.

Notwithstanding the numerous statutes against perpetuities in this country, any person who carefully plans the transmission of his property can still by will or otherwise tie up his estate or a substantial portion of it and accumulate the income thereon during the lives of any number of living persons and twenty-one years after the death of the last survivor, perhaps a hundred years or more even as did Peter Thellusson. Such a result, however, must be deemed of sufficient importance to warrant the resort to somewhat unusual methods combined with exceptional precautions. Property may be thus tied up and income accumulated by persons domiciled in any State or country including residents of

New York, Louisiana, Great Britain or other foreign country, even those where trusts are not authorised by law. It must be remembered, however, that such an undertaking in most cases is exceedingly hazardous unless technically correct in detail and should not be considered except under exceptional circumstances.

The recent unfortunate attempt of the late Henry B. Plant, a resident of New York, illustrates the folly of taking chances with the law against perpetuities. His testamentary scheme of creating a huge trust for the benefit of his descendants to continue for more than two lives in being was legally practicable, but the method he employed was ill advised and fatal. Indeed, the courts throughout the country are adjudging each year, on one ground or another, hundreds, if not thousands, of wills and codicils wholly or partly void as not being properly drawn with reference to the law of accumulations, trusts, and perpetuities.[1]

[1] The wills or codicils of the following named persons are a few of those recently so adjudged in the City of New York

alone: Maurice Ahern (trust void), James J. Alexandre (unlawful accumulations), Rachael Almstaedt (trust void), Annie Jane Bills (execution of power of appointment void), Agnes Boerum (illegal suspension), Paul Sandstrom Brown (trust of residuary estate void), Valentin Bruchaeser (trust void), Elizabeth B. Caldwell (trusts void), Nathan Clark (certain trusts void), Amos Cotting (trust void), George W. Cummings (illegal suspension), Mary A. Edson (certain trust including a secret one void), George Washington Egleston (unlawful accumulation), Georgia Fargo (execution of power of appointment void), Joseph Fisher (trust void), Peter Fuchs (trust void in part), James A. Garland (unlawful accumulation), William T. Garner (unlawful accumulation), George Hagemeyer (trust provisions and power to sell real estate void), Mary E. Henry (trust void), Jesse Hoyt (unlawful accumulations), George Jones (execution of power of appointment void), James W. Lawrence (trust void), Francis McCabe (trust void), J. Jennings McComb (certain trusts in will and provisions in codicil void), William Mulry (trust void), Maria Murray (execution of power of appointment void), August Roos (unlawful accumulation), Elijah T. Sherman (trust void), Joseph H. Snyder (unlawful accumulation), Christian F. T. Steinway (trust void), John Sullivan (unlawful accumulation), Samuel J. Tilden (gifts to charity void), Charles W. Trotter (certain trusts void), George A. Trowbridge (trust of New York real estate void), John Guy Vassar (gifts to charity void), Edward Walker (trust void), David Wakeman (trust of New York real estate void), George Whitefield, Jr. (trust void), Samuel Wood (gifts to charity void), Amos Woodruff (unlawful accumulation), and Edward A. Wooley (trust void).

In this connection it may also be interesting to note that the foundation for the Nobel Prizes might have met the fate of the Tilden Trust had not the executors of Dr. Nobel's will entered into "a deed of adjustment of interests" with his heirs.

As to the preparation of wills and kindred instruments see p. 76 *post.*

CHAPTER IV

TRANSMISSION OF PROPERTY

WHATEVER may be the possessions of man they cannot pass with him beyond the Styx. The owner of property cannot direct its use after death except by means of some instrument of disposition executed in his lifetime. Such instruments are usually instruments of gift of which there are several classes. Those most commonly used are wills and deeds of trust or settlement. Under wills gifts take effect on the death of the testator or upon the happening of some subsequent event. Under trust deeds or settlements gifts may or may not take effect upon the execution of the instrument. In one or more of these instruments the possessor of wealth may, within certain limits prescribed by law, insert pro-

visions designed to extend his dominion over his property after death. Which instrument is better to accomplish a particular purpose depends upon the circumstances of each case. Sometimes both are advisable.

Where the owner does not wish his property, upon his death, to pass by the law of intestacy but rather desires to project its power into the future he has two courses open. (1) He may make conditional or restricted gifts, by will or otherwise, to persons or corporations. Thus the giver may after death exercise power over his gift to his family or to a corporation by making it conditional or something less than absolute; as by establishing a trust or creating a power whereby the use of the property is prescribed or restricted. (2) He may make absolute gifts to corporations organised for suitable purposes. Thus if he gives property to a corporation chartered for a special purpose he has the warrant of the law that his gift will be applied to that purpose. With these courses clearly in mind the possessor of wealth may well consider

the planning of a will or other instrument or the making of gifts during life which shall determine the use of his property after death.

CHAPTER V

PLANNING TRANSMISSION

One of the important problems of life for the possessor of little or much is the proper transmission of property at or before death that the owner's obligations to his family and to society may be wisely and honourably discharged.

What obligations the possessor of property may have to family and to society in the absence of positive law, must be determined by his own conscience. What may constitute a wise and honourable discharge of those obligations his own good judgment in the light of his conscience and the surrounding circumstances must determine.

The uses of wealth after death are numerous. Such uses may be (1) purely private, as

for the benefit of family and friends;[1] they may be (2) purely public, as to promote some charitable object;[2] or they may be (3) mixed, as to promote both the public and family welfare.[3] Whether the plan embraces one or more of these purposes, it should be specially adapted to the size and conditions of the estate concerned and the executors or trustees should be provided with ample powers to enable them to meet conditions and emergencies that may arise, in much the same manner as the deceased might have done if living.

In planning the transmission of property the owner must take into account the extent and character of his possessions and the law of his domicile; if he owns real estate, he must consider the laws of the state or country where it is located. He must take into account the size of his family, their requirements, their relationship, whether wife, husband, children or more remote kindred, their sex, their characters and habits, if married the character and habits of their husbands or wives, their

[1] See p. 25. [2] See p. 31. [3] See p. 40.

ages if living or the possibility of their subsequent birth, the character of their education, experience, and business habits, and whether or not they are possessed of independent means or likely to be provided for by others. Besides these, special points of consideration frequently arise in consequence of second marriages and peculiar family circumstances.

The owner of property must also bear in mind the character of gifts he wishes to make, whether they be of money or specific property, whether the gifts shall be absolute, conditional, or in trust, whether the use or the income shall be given for life or for a less term, and what shall become of the capital and accumulated income, if any, after the termination of the trust.

In making his plan for the transmission of property the owner should not lose sight of the fact that many things expected or unexpected may happen before his plan becomes effective. The amount or character of his property may materially change. His real estate may be more or less converted into

personal estate and *vice versa*. His stocks, bonds, mortgages, and other securities may be paid off or otherwise changed in form. The value of his property may be very much greater or very much less; indeed, it may not be enough after the debts have been paid to pay the legacies. Then, too, unborn natural objects of bounty may come into being or one or more beneficiaries may die with or without leaving issue. There may be other family changes, immediate or remote, which are worthy of consideration. Even the owner's condition may so change that he may no longer be able to alter his plans to meet conditions as they arise. In short, all probabilities and possibilities must be taken into consideration and the instrument of transmission planned accordingly.

CHAPTER VI

PLANS FOR FAMILY AND FRIENDS

PLANS for the benefit of family and friends are usually of the first importance and in a majority of cases they alone receive consideration. Persons of small means generally make absolute gifts of their property. Many give all to the surviving spouse as a means of providing for the family as a whole. Many divide their property among the different members of the family in equal or unequal portions, in some instances tying up certain shares to suit varying conditions.

As estates become larger the tendency is greater to tie up property by making gifts which are not absolute. The law permits the giver to use a large discretion in this respect. He may make gifts which will take effect or terminate on the happening of

specified events such as marriage, birth of issue, death without issue, death before a certain age, simultaneous death, survivorship, bankruptcy, disputing the testator's will, or the like. He may give the use or the income of property for life or for a shorter term. He may pass the income from one person to another or he may authorise his trustees to do so. He may provide an income for his son, daughter, or other person without rendering his gift liable to the claims of creditors and by proper power of appointment may authorise his beneficiaries at death to distribute his property by will or otherwise. With all these possibilities and many others open to a person disposing of property he has an almost unlimited range within which to plan for the benefit of family and friends and he may incidentally retain a most important influence over his gifts. If possessed of ample means he can give effect to any legal and practicable purpose affecting those most near and dear to him.

Among recent wills of wealthy men the

plan of the will of the late Charles L. Tiffany is fairly typical so far as it provides for his family. To his wife he gives his residence, its furnishings, his horses, carriages, a substantial sum of money, and certain shares in Tiffany & Co. He also gives her the use of his country home and establishes a trust from which she is to receive the income during life and on her death he gives the capital to certain children. To each grandchild he gives a pecuniary legacy, the one bearing his name taking a double portion. To certain persons he forgives their indebtedness. The remainder of his estate he divides among his children in unequal shares. To some he makes his gifts absolute; for others he creates trusts during life. Under some trusts a child takes all the income; under others a child receives only so much of the income as the trustees think best, the excess passing to other persons. Under some trusts the trustees are given power to pay over the capital as well as the income. Any portion not thus paid over to a child during life passes after

death to his issue if any and if not to brothers and sisters, but in one case the issue of a particular marriage is not permitted to take.

The Astor wills are interesting and important documents dealing with large holdings of real estate in the City of New York. The original John Jacob Astor devised the bulk of his real estate to his son William B. for life with power to appoint the same by deed or will among his children and their issue. William B. on his death exercised this power largely in favour of his two sons, John Jacob and William. The greater part of his own estate he placed in trust for their benefit with gifts over to their issue. When these sons came to die John Jacob made an absolute gift of the bulk of his property to his son William Waldorf. William Astor followed more in the footsteps of his father and grandfather. He exercised various powers of appointment, made numerous gifts, and created various trusts for certain of his children. He devised the residue of his estate in trust for the benefit of his son, John Jacob Astor, for

life with power of appointment among his issue and failing issue over to others.

The wills of John Carter Brown, John Nicholas Brown, and Harold Brown like the wills in most families have a family resemblance. They deal with very large estates and guard very carefully the possible failure of issue and the death of issue before majority or vesting of the estate, with the result that if these great properties finally vest in a descendant they will probably continue to be compactly held. The Goelet wills dealing largely with real estate and the Vanderbilt wills dealing largely with personal property like many other wills of importance follow somewhat similar lines tending to the maintenance and stability of family.

Dr. Charles W. Eliot observes as one of the great disadvantages of the transmission of wealth in families "that the young men who inherit money often find life a terrible bore. It is that very class of people that oftenest ask Mallock's question, 'Is life worth living?' It is the people who do not have

to work for their own livelihood and that of their families who most frequently ask that question. . . . It is your young fellow who has much money in the bank and more in bonds who doubts the worth of living. It is a miserable question to ask; the man who asks it is in a wretched, unnatural state of mind."

The remedy for the difficulties which encompass the problem of the transmission of great wealth within the family, as Dr. Eliot sees it, "is contained in the word *service*—in the desire and purpose to be of service." It lies "in setting up true ideals; in the recognition of wealth as a means, and not an end." To the stimulation of that desire and purpose the possessor of wealth may wisely give special attention when planning his instrument of disposition.

CHAPTER VII

PLANS FOR THE PUBLIC

PLANS for the benefit of the public, while usually secondary, are often of great importance. A gift for a public purpose may take several forms. As heretofore indicated, such a gift may take the form of a trust for charitable uses or of an absolute or conditional gift. It may be given to a charitable corporation already in existence or to one to be organised in order to receive the gift and to work out the donor's plan.

The usual method is to make gifts for the purpose of sustaining existing institutions. In this manner Sally Thomas, a poor working woman, bequeathed $345.83, the savings of a long and laborious life, for foreign missions, probably the first legacy ever given for that purpose. In like manner the late John

S. Kennedy bequeathed millions for many charitable purposes. Such gifts may be given generally, without designation or restriction as to use; they may be given as applicable to the general use of the corporation, or they may be assigned to a specific purpose within the scope of the donee's powers. They are sometimes coupled with a provision that the fund bear a designated name as a memorial, be retained as a permanent endowment and only the income used, or the like.

When a satisfactory corporation does not exist the possessor of wealth may found a suitable institution during his life or may provide for its founding after his death. Such a course, however, should be pursued, only after the most mature consideration on the lines indicated in Chapter XIII on the selection of charitable objects.

Foundations before death are quite popular at the present time. They are at their inception insured the benefit of the guiding hand of their founder and at the time of his death they are going concerns and ready to

receive any additional gifts he or others may choose to make to carry the work forward. This was the method pursued by Peter Cooper, W. W. Corcoran, Matthew Vassar, Johns Hopkins, Leland Stanford and wife, Charles Pratt, Enos Pratt, and many others.

By certain recent foundation gifts of great sums of money, prominence has been given to what may be called the almoner or trustee type of charity. Such foundations are designed to provide means for research or other charitable purposes and in a greater or less degree to work through other agencies rather than to do charitable work at first hand. They are said to "reveal a new force in civilisation" which seems to be growing in favour. Of these foundations we have as notable examples the General Education Board and the Rockefeller Foundation instituted by John D. Rockefeller, the Carnegie Institution of Washington and the Carnegie Foundation for the Advancement of Teaching by Andrew Carnegie, the Russell Sage Foundation by Mrs. Russell Sage, and some others. These

foundations are all corporations specially chartered to receive and administer funds for their respective chartered purposes. They have power to make investments and to administer the income more or less in perpetuity as almoners. Thus for all time they are authorised to act as the agents of their founders and other contributors in distributing the income or principal for such charitable purposes as come within the scope of the broad and general terms of their charters. A similar result has been attained by the trust form of gift. The late George Peabody created the Peabody Fund and the late John F. Slater the fund long bearing his name by making gifts to trustees. The property given was in each case conveyed to certain individuals by a deed of trust defining the purposes of the gift and the powers and duties of the trustees and their successors. A similar result is sometimes attained by means of a will.

The almoner form of charitable corporation is created as other charities are created

and acquires property in the same manner: it requires no new form of gift. The difference between this charity and others lies only in the objects to be attained, that is, the purposes for which it may make use of its property. In other words if a donor wishes an almoner to do his deeds of charity he should direct his gifts into that channel; if he wishes to select his own charitable objects his course should be the usual one of making direct rather than indirect gifts.

From the standpoint of many philanthropic persons, it is for various reasons desirable and often more practicable to provide for suitable foundations after death. This may be accomplished in several ways by deed or by will. (1) A person may give his property to an existing corporation in trust for the foundation of an institution germane to its general corporate purposes. In this manner Stephen Girard gave property to the city of Philadelphia in trust for the foundation and maintenance of Girard College. The late Ervin Saunders gave his residuary estate, in

memory of his father, to the city of Yonkers in trust for the foundation and maintenance of a trades school as a part of the public school system. This gift was made conditional upon the city accepting the provisions of the will and furnishing a suitable site for the school. (2) A person may give his property to trustees with a gift over to a suitable corporation to be created after his death and within the period prescribed by law. This method was pursued by James H. Roosevelt, and resulted in the Roosevelt Hospital in the City of New York. The will of the late Samuel J. Tilden failed to meet the requirements of this form of gift by reason of the fact that under the limitation over to the Tilden Trust the gift did not necessarily vest, by force of the will, on the happening of the event, namely the incorporation of the Trust "with capacity to establish and maintain a free library and reading room in the City of New York." The corporation was to take nothing by virtue of the will. The estate was given to the trustees and the legal title

was to remain in them until by their discretionary action, if ever, they should think best to convey it to the corporation. The unfortunate alternative provision was that, if for any cause or reason the trustees should deem it "inexpedient" thus to convey, they should apply the residuary estate "to such charitable, educational and scientific purposes," as in their judgment would make the estate "most widely and substantially beneficial to the interest of mankind." (3) Where the law of charitable uses prevails a person may by will give property to trustees without any direction as to incorporation upon a trust, more or less indefinite as to purposes and beneficiaries, for founding and maintaining the desired charity. This method, although inviting to litigation and in other respects objectionable, has been sustained by the courts from very ancient times in order to save to the public charitable gifts otherwise void, and to this fact many charities owe their existence. Among recent instances of this are the two great library foundations in

Chicago made by the wills of Walter L. Newberry and John Crerar both of which were subjects of litigation. In New York this method of making charitable bequests was made lawful by an act of the legislature after the failure of Governor Tilden's will.

In some wills a combination of methods is found and various expedients are introduced to prevent failure of purpose. Thus Robert Richard Randall gave his farm on Broadway below Fourteenth Street in the City of New York to certain persons and their successors in trust to found and maintain what is known as the Sailors Snug Harbour, if they could do so legally, otherwise the gift was to go to a suitable institution to be incorporated by act of the legislature. If these gifts should fail and the property finally come to the testator's heirs, he provided that they should take the same charged with the trust for the foundation of his proposed public charity. In like manner the late Winfield S. Stratton of Colorado bequeathed the residue of his estate to trustees to found the "Myron Strat-

ton Home" in memory of his father, and in the event that the gift should be adjudged illegal or void he bequeathed the same to the State of Colorado for charitable purposes.

The method by which the rich man can best benefit a community, says Andrew Carnegie in his *Gospel of Wealth*, "is to place within its reach the ladders upon which the aspiring can rise." After the obligations of family have been discharged surely there can be no more commendable object for the use of wealth.

CHAPTER VIII

PLANS COMBINING PUBLIC AND PRIVATE PURPOSES

PLANS for the accomplishment of both public and private purposes are often found in wills and kindred instruments and their possible extension is worthy of consideration. Perhaps the most usual are those requiring a descendant or other beneficiary to perform certain acts or engage in some useful employment in order to be benefited under the will.

Thus the late Cecil Rhodes in his will declares that he feels "that it is the essence of a proper life that every man should during some substantial period thereof have some definite occupation," and that an expectant heir should not develop into a "loafer." He therefore in entailing his Dalham Hall estate provides for forfeiture on attempted sale by

an heir of his interest in the estate or failure to engage in some profession or business other than that of the army for a period of at least ten years. With a similar motive the original John Jacob Astor devised the use of certain real estate to his grandsons for life and provided that if his son, their father, "should consider either of them to have become unworthy of this devise" he might convey the share of such one or more of them to the others, etc.

The late William J. Gordon in benefiting the public by giving to the city of Cleveland his country seat known as "Gordon Park" provided that his burial plot therein should be maintained at public expense in as good condition as constructed and improved by himself or his executors.

While the will of the late Russell Sage makes absolute gift of his residuary estate to his wife she is undoubtedly administering it in accordance with his wishes primarily for the benefit of the public. Such absolute gifts are frequently made by testators accompanied

by letters of request. Thus after willing his property to his wife the late Alexander T. Stewart left a letter requesting, in case his life should not be spared to complete his plans, that she make provision for certain proposed charities which he then had under consideration. Such a method, however, frequently fails.

Matthew Vassar, the founder of Vassar College, in giving a certain fund to the College charged thereon the board and tuition of such of his female blood relatives as might wish to attend the College and of the daughters of a certain friend.

The will of the late Charles Pratt is a wonderful example of originality. Besides providing an income for his children graduated, by the yearly addition of a certain sum to each, he makes provision for the Pratt Institute, a notable monument to a noble mind. Then in order to induce one of his sons to "continue as the recognised head of the faculty and give his time and energy to the development of the institution" and "as an

encouragement for him to continue in said work," he provides for a certain increase in his son's salary each year, depending somewhat on the success of the institution.

Mr. Pratt recognised the efficiency of service "the desire and purpose to be of service." He utilised Dr. Eliot's remedy for the dangers of transmitting great wealth in families. His will is clearly the result of much study. It suggests possibilities along the line of which other possessors of wealth may encourage their sons so to live that an assured income and leisure shall not blight productive effort.

CHAPTER IX

USUAL OBJECTS OF BOUNTY

THE objects most near and dear to the average man or woman are his or her spouse, descendants, and ancestors. Then come dependents, collateral relations more or less according to degree of kinship, friends, and employees.

In making testamentary provision for kindred the donor must be mindful that his legal obligations and duties may vary with his domicile or the location of his property. In some jurisdictions the wife is entitled to dower and the husband to courtesy or other rights independent of any will. Children and other descendants are also more or less protected by statute in some States. Children born after a will is made, if not provided for or properly mentioned in the will, are frequently

allowed to take as if no will had been made. In some jurisdictions a testator cannot entirely disinherit his children, except for cause, or will away from his family more than a certain part of his property or give more than a certain portion to charity.

Where kindred are thus protected and are dissatisfied with the terms of a will there are several courses open to them. They may elect (1) to take under the will and thus consent to its provisions, (2) to take independently of the will what the law may give, or (3) to contest the will, and if successful take as if no will had been made and if unsuccessful take under the will as if it had not been contested. To cope with such privileges successfully and make the plan of the will workable whether or not the privileges are exercised often requires the most careful consideration on the part of the testator and his counsel. Special provisions must be conceived and framed to meet all possible contingencies. As far as may be they should also be aimed at the prevention or discouragement of litigation.

Where testators are not thus hampered by statute they may make such gifts to their children and other descendants as may seem to them best or they may pass them by and give all property to others. Where, however, antenuptial agreements or powers of appointment exist they must be taken into consideration.

The status of an adopted child depends on local legislation. Statutes of adoption frequently, if not usually, provide that the adopted child shall have the rights of a child including the right of succession to property of the foster parent. Illegitimate children, however, usually do not inherit except from their mother. Their status is peculiarly unfortunate and a proper provision for them requires great care.

Gifts to friends and employees require no special mention more than to say that gifts to employees are frequently conditioned on employment for a longer or shorter period.

Where a donor wishes to benefit a person without subjecting his gift to the management

and disposition of that person or to expose it to the claims of creditors, the gift must be something less than absolute. Such a desire would suggest trusts rather than annuities or other kinds of limited gift.

The possible existence of infants would indicate guardianships or other testamentary provisions for their protection. Except in certain jurisdictions where their rights to hold real estate depend upon treaty or statute, aliens are under no disability as to taking gifts of money or other property.

Where a donor wishes to benefit a female he should consider whether it may not be of advantage to her either to create a trust for her benefit, possibly with power of appointment, or to make his gift vest in her for her sole and separate use to the exclusion of the marital rights of any present or future husband. In some States and foreign countries the law insures to the husband on the death of the wife as much as one third or one half of her property and this right cannot be defeated by an ordinary will. Again, in

certain jurisdictions if the wife dies without a will the husband takes all the personal property even to the exclusion of children. Then, too, where the common law doctrine of the unity of person between the husband and wife has not been fully met by a married women's act the husband's rights in his wife's property during her life as well as her right to make a will without his consent may not always be clear. Consequently the form of a gift to a female requires special consideration. It also has a peculiar importance by reason of the fact that the husband has the legal right to change the domicile of his wife to a jurisdiction which may prove more favourable to himself.

CHAPTER X

PRESERVATION OF FAMILY HARMONY

In planning the *post-mortem* disposition of property the donor can consider no more important feature of his task than the preservation of harmonious relations within his family. No rule can be stated as every donor has a different task from his neighbour. That difference lies not only in the amount and character of property to be disposed of, but also in the number, character, education, sex, moral sentiments, and personal peculiarities of heart and mind of the objects of bounty as well as their husbands, wives, and associates.

Families are frequently split by the unfortunate division of household and personal effects, especially where sentiment is attached to particular articles. Unwise selection of

executors or trustees within the family may also be a source of friction.

A serious source of discontent is found in discriminations made between relatives of the same degree of kinship. While this discontent is directed primarily against the giver, it has a certain reflex action among the donees particularly where undue influence is suggested or where no good reason for the discrimination is so self-evident as to carry conviction to a disappointed and unwilling mind. The most serious difficulties, however, arise from indifferently drawn instruments affording opportunities for dispute as to meaning or legality and from home-made and stale wills and misfit codicils where the soil for disputes and litigation is peculiarly fertile.

CHAPTER XI

PROPERTY TO BE TRANSMITTED

As a will does not become operative until the death of its maker, it can affect only such property as he may then own or over which he may have a power of disposition. The testator's plans, therefore, should embrace all equitable estates, contingent as well as vested interests, capable of passing as intestate property, all property which he may acquire after making his will, and all property over which he may have a power of appointment. Property held by the entirety or strictly in joint tenancy passes only by the will of the survivor.

Besides considering his property in bulk, it is often important for the owner to make special plans affecting particular property such as his home, furniture, jewelry, clothing,

business, cemetery plot, real estate subject to mortgage, personal property which is subject to a lien, franchises, insurance policies, community property, property subject to appointment, and the like. Thus he may have special plans in relation to the use and maintenance of his cemetery plot; he may wish to make gifts of specific property, provide for the payment of mortgage or other debts out of particular funds, provide for the continuance, winding up, or incorporation of his business, etc.

Special powers affecting particular property may be important subjects of consideration. Thus, as affecting real estate, it may be desirable to give the executors or trustees power to sell, mortgage, exchange, or lease, to operate mines, to subdivide into lots, to destroy old buildings and erect new ones, and the like. As affecting stocks and bonds it may be deemed wise to provide powers touching their retention as investments, voting thereon, corporate reorganisations, etc. In the hands of competent executors and trustees

broad and comprehensive powers are often of the greatest value to an estate particularly where it is involved or unusual situations are presented.

CHAPTER XII

CHARACTER OF GIFTS

THE character or form of gift is the key to the *post-mortem* power of wealth. It is the turning point between wisdom and folly in the transmission of property. It should be the direct consequence of a due consideration of the age, sex, character, habits, and associations of the persons to be benefited.

Thus an intelligent determination of the character or form of gift suggests many important questions.

Shall the gift be of money or of a specific article or particular piece of property? If money is given, is its payment to be a charge against the real as well as the personal estate? What, if any, preference is to be given as to payment in case of a shortage in assets? Where a specific article or piece of property is

to be given and the gift is not to take effect immediately as in the case of a will what, if anything, is to take its place, if at the proper time such property has been disposed of or cannot be found?

If a gift is to carry with it the right of immediate possession or enjoyment shall it be absolute in character? Shall it be subject to a condition which must be performed before the gift can take effect? Shall it be subject to a condition which permits the gift to take effect under a penalty of possible forfeiture? In case of the breach or nonfulfilment of the condition, to whom shall the property pass? On what contingency shall the condition depend: marriage, birth, death without issue, death before a certain age, survivorship, bankruptcy, disputing or failing to dispute a will, *et cetera?*

If a gift is to be to several persons is it to be for each separately or for all collectively? If for all are they to take as a class, as joint tenants, or as tenants in common? Shall after-born persons share with those previously

born? What provisions are desired as to survivorship or the prevention of lapse? In case of survivorship to what point of time is the survivorship to relate?

If a gift is to a wife or other person having statutory rights shall it be in addition to or in lieu of dower or other such rights?

If a use is given shall it be for life or for a less period? Shall the use carry the right of possession of the particular thing, or only a right to the income without the right of possession? Shall the use carry with it a right of disposal of the thing itself during life or after death? If the use is to be given through a trustee, shall the trustee possess a power to apply principal, as well as income?

If a trust is intended, is the donor's purpose such that it may be lawfully accomplished? How long shall the trust continue and how shall it be terminated? Shall the income be paid over in gross or only after the usual deductions as for taxes, expenses, etc? From what time shall the income begin to accrue? Shall the income be subject to anticipation, to

assignment, or to attack by creditors? How shall the income be applied or paid over? What rights, if any, shall a wife and children of the beneficiary have in the income? In case there shall be an excess of income shall it be accumulated, and if not how shall it be applied? Finally, after the use terminates, what disposition is to be made of the property itself?

Since in the planning of gifts all these questions and many others must be determined unconsciously if not consciously it is the part of wisdom and good stewardship to meet them squarely and to decide them intelligently. By so doing the possessor of wealth prevents his property from becoming a drifting derelict for the wrecking of character and careers and converts it into a living force building for the good of the individual and of mankind.

CHAPTER XIII

SELECTION OF CHARITABLE OBJECTS

ADDISON says "charity is a virtue of the heart and not of the hands." This is true of lazy charity and is specially applicable to indiscriminate giving. Wise charity is an affair of heart, head, and hand for it implies an intelligent sympathy, a definite purpose, and a practical business sagacity acting in unison.

So to give as to accomplish true charity during life or after death is often a most perplexing question both to the possessor of wealth and to his legal adviser. Before one can intelligently act or advise in the selection of a charity he should take a general survey of the purposes toward which charitable gifts may be directed and the principles that should underlie such gifts.

The main purpose of charitable gifts is to

better the condition of man. The most potent force in that betterment is personality. The next most potent force is money, that great commander of the world's resources. And here lies the opportunity of wealth to unite potentiality and personality. The giver of personality makes the largest gift to mankind. His close second is the giver who furnishes the means whereby the giver of his personality may be made the more effective or whereby other givers of both personality and fortune may be raised up to carry on indefinitely the work of bettering the condition of man.

Most fortunate is the man who can both contribute of his wealth and administer his charitable gifts in his lifetime and most fortunate is the age and the community which possesses such men.

The purposes for which money may be given in charity are in general well defined. They may be enumerated as educational advancement, moral, political, and physical improvement, and physical and financial relief.

Educational advancement is attained through manual training as by trades schools, art schools, sewing schools, cooking schools, and the like. It is attained through primary instruction as by kindergartens and primary schools. It is attained through secondary instruction as by high schools, academies, and preparatory schools. It is attained through higher education as by laboratory, college, and university. While the enlargement of the boundaries of human knowledge through research may not be strictly educational it is often carried on in our highest institutions of learning and is frequently so classified and regarded as the acme of higher education.

Moral improvement is effected through moral and religious training as in churches, religious societies and orders, Christian associations, Bible societies, missions, settlements, clubs, societies for the promotion of temperance, the suppression of vice, the study of labour, and other social questions.

Political improvement may be effected by means of gifts in aid of the study and pro-

mulgation of legislative and administrative reforms as by the establishment of scholarships, lectureships, publication funds, and gifts to municipal and civic leagues, good government clubs, patriotic societies, societies for the development of better elective methods and kindred objects.

Monuments, statues, conservatories, scholarships, fellowships, lectureships, libraries, reading rooms, museums, art galleries, and halls for public meetings administer to political and social betterment as well as to the promotion of education, morals, and religion.

Physical relief is administered through societies designed to aid the needy, destitute, delinquent, neglected, defective, and sick, both young and old, through hospitals, asylums, homes, and lodging houses, and by furnishing employment, necessaries, medical services, burials, and the like. With these in a way may also be classed societies for preventing cruelty to children and to animals.

Physical improvement is attained through parks, playgrounds, baths, athletics, and

societies for the improvement of living conditions and to render occupations more healthful.

Financial relief is effected by temporary loans and by legal aid—most wholesome charities and great preventives of crime.

Certain other benefactions have an exceptionally broad scope and far reaching effect. Such are gifts of public parks, fountains, public baths, playgrounds, and for the betterment of living and labour conditions. Perhaps the most far reaching of all are corporations or foundations devoted to the establishment and maintenance of permanent funds from which the income is distributed among deserving educational or other charities.

Akin to this class are also societies for the support of domestic and foreign missions which administer to the physical, mental, and moral welfare of man.

Although the foregoing classification may be of service in some respects it must not be followed blindly. Each form of charity in greater or less degree partakes of some

other. The idea of education as it enters into charitable purposes is doubtless the largest and most fundamental. It is the basis of substantially all charity, save perhaps in some forms of distinctively relief work. No charity stands alone. Every charity affects others either directly or indirectly. Thus all charity has not only a primary, but also a secondary purpose which requires consideration.

The fundamental ideas underlying wise charity are education and self-help, with relief and betterment of conditions as temporary and contributing agencies. Relief which does not encourage self-help is pauperising and objectionable except in the case of very young children, incurables, and the aged, where it becomes merciful and Christian. Gifts for the betterment of the physical, mental, moral, political, and social condition of man are usually less open to the objection of pauperisation than gifts for physical or financial relief.

Charities are corrective or preventive in their operation. From an investment point

of view preventive work appeals more strongly to the average giver but the sympathetic mind is moved more to aid in the relief of the unfortunate and in the uplift of the degraded. Be that as it may the variety in charitable purposes and their needs is so great that all givers should be able to find suitable objects of gift.

With this wide range of charitable objects to choose from what considerations should move the mind of the giver in making his choice of objects to which he will give his service or his wealth? The first consideration should be the amount of time or money to be given, the second, the selection of the purpose which appeals most strongly to the conscience and good judgment of the giver.

In determining these questions the giver has before him the claims of local as well as of national and international charities. He should also determine various other questions, as for example: Will the gift tend to pauperisation or self-help? Is the institution wisely managed? Is it assured the active and dis-

interested co-operation of a numerous body of supporters? Is the gift likely to dry up the supporting generosity of the public? Is the necessity for such work likely to continue? Will the gift tend to an unwise duplication of effort or to strengthen worthy hands already at work?

After the giver has decided on the charitable object he must determine whether his gift is to contemplate:

(1) Expenditure of capital:
  (*a*) for general purposes
  (*b*) for special purposes such as
    to erect a dormitory
    to erect a hospital
    to buy land
    to buy books for library and the like
(2) Permanent investment of capital (endowment) and expenditure of income only
  (*a*) for general purposes
  (*b*) for special purposes such as
    to buy books for library
    to maintain a kindergarten
    to maintain scholarships and the like.

If the gift is to be memorial in nature various other matters will suggest themselves to the mind of the giver for his consideration.

While a careful consideration of all the points indicated may be a tedious undertaking and not necessary in the case of small gifts, where a life is to be devoted to philanthropic work or where benefactions are to be large a careful study of the subject is an economic necessity.

CHAPTER XIV

TAXATION OF ESTATES

ESTATES of deceased persons are in general subject to the usual annual taxes imposed on real and personal property. In a large majority of the States an inheritance or transfer tax is also imposed on property which passes at the death of the owner and in the greater number of such States the tax affects not only gifts to strangers and collateral relatives, but also to spouse and descendants. Even gifts made during life to take effect either in possession or enjoyment at or after the death of the giver are ordinarily taxable. Where, however, absolute gifts are made during life they are not usually taxable unless in law they amount to gifts made in contemplation of death, a question sometimes

difficult for the courts to determine. Gifts to certain charities are often exempt.

Where an inheritance tax is to be paid the donor should consider whether he may wish to have the payment made out of the particular gift or out of his general estate and make provision accordingly.

The inheritance taxes in this country are taking on the graduated feature found in England. At the present time nearly one half of the States have adopted that method of taxation. In six States the maximum is fifteen *per cent.* In New York as these pages go to press the maximum is twenty-five *per cent*, with a fair prospect of a repeal of the present law and a return to the flat rate of one *per cent* on gifts to near relatives and five *per cent* on gifts to collateral relatives and strangers.

Oklahoma's inheritance tax law is certainly unique. All inheritances and bequests above moderate exemptions are taxed from one to one hundred *per cent* depending on kinship and amount. The rates begin with one or

five *per cent* on small sums and increase a fraction of one *per cent* on each additional one hundred dollars. As there is no limit to such increase it soon mounts up to one hundred *per cent.* The constitutionality of this law is yet to be tested. What makes it of general importance is the fact that investments within that State, including stock in local corporations held by non-residents, are subject to this tax if held at the time of death.

Death duties in England, in one form or another, have been growing since 1694 and recently, by the Finance Act of 1910, they have been again materially increased. Gifts passing on death are now taxed in the United Kingdom, one, five, or ten *per cent,* according to kinship. Another tax is imposed upon the estate generally, and paid as an expense of administration. Its rate is graded according to the amount of property left by the deceased and ranges from one *per cent* on small estates to fifteen *per cent* on that part of an estate which is in excess of one million pounds. A further estate duty of two *per cent* is

collected, with certain exceptions, on settlements made by the will of the deceased or which pass by reason of his death.

The question of the taxation of estates of deceased persons under present laws, to say nothing of new ones which may be enacted, warrants the most diligent attention of counsel and full consideration on the part of the owner before he can wisely make investments, select executors and trustees, or plan the disposition of any considerable estate. Where care is not exercised an inheritance tax on the same property is frequently collected in two different States or countries, thus producing a double taxation. Aside from Oklahoma such taxes under present laws affecting collaterals frequently amount to ten and sometimes fifteen *per cent* on small estates, while on large estates the rate may easily be as high as thirty or even thirty-six and one quarter *per cent*, particularly in the case of English estates invested in any one of six States, and more if invested in New York while the present law stands. Taxation of the same property in three

jurisdictions, while possible under several statutes, is as yet comparatively infrequent. Conditions may be conceived, however, under which certain property may be subjected to inheritance taxes by the laws of four jurisdiction.

In addition to inheritance taxes the annual taxes on trust funds, in some instances, exceed one half of the income, and the courts have held that it is no part of the duty of an executor or trustee to attempt to benefit an estate by evading taxations.

Under present tax laws the natural impulse is akin to that of self-preservation. Many persons consider themselves under a moral obligation, even at some personal sacrifice, to take advantage of such proper means as the law affords either to render their gifts non-taxable or to reduce to a minimum a tax which they regard as unreasonable and unjust to the point of confiscation. Indeed the constitutions and the laws of this country are such that where the estate of a person of large wealth residing in this country or even in

England is burdened with excessive inheritance taxes or death duties it is only because he lacked inclination or was dilatory or careless in the adjustment of his affairs or in the preparation of his will or other instrument disposing of his property. While Englishmen are under greater disadvantages in this respect than Americans yet even they by proper precautions at home and proper business relations with this country are able to share in the benefits of a constitutional government and thus relieve their estates of what would otherwise amount to enormous burdens of taxation. As all this is legally possible without changing one's residence and without resorting to any of the questionable or dangerous expedients so frequently suggested, it seems safe to predict that unless the present death duties at home and abroad are substantially reduced, owners of property will take advantage of all lawful means to reduce taxes until eventually a majority of large estates will on the death of their owners pass comparatively free from taxation.

CHAPTER XV

SELECTION OF EXECUTORS AND TRUSTEES

THE prime factors in determining the selection of executors and trustees to administer an estate after death should be (1) safety and (2) efficiency.

The method most often adopted to secure these qualities is to rely upon the character and financial standing of the persons appointed: a course which may be supplemented by requiring bonds to be given by individuals or surety companies. Another method is to appoint a trust company to act alone or jointly with one or more persons.

Where individuals are selected, whether relatives, legal advisers, or friends, their integrity, ability, personal and business habits and associations should be the subject of concern. Preference may well be given to a

male rather than to a female, to the man who has no adverse interest, who is morally sound, whose family is not extravagant, who has a means of livelihood, who does not live beyond his means, who has good and regular business habits, who is moderately successful, who does not make speculation a business, who does not buy and sell on margin, who has a mind of his own but is not self-opinionated and who is free from prejudice, capable of discrimination, sound in judgment, and considerate of the rights of others.

Where there are no trusts, where the corpus of the estate is to be divided, and where family jealousies are not likely to be aroused there can be no objection to the selection of executors solely on the ground of interest or kinship. If, however, a trust is contemplated different considerations necessarily enter into the selection of a trustee. Thus a beneficiary, whether a life-tenant or remainderman, is an unfit person in law and in fact by reason of interest. Near relatives are objectionable for the same reason and because they are "less able to

withstand the importunities of beneficiaries." In the same way, where a husband, wife, parent, or other near relative is appointed trustee such relationship "is too often made an excuse for lax management, and the knowledge that a breach of trust is likely to be condoned not infrequently leads to a disregard of strictly legal management which is the only safeguard of trust estates."

Where a trust company is selected, after giving due weight to capital, surplus, and reputation it is also proper to consider the personnel of the directors, officers, counsel, and employees who are to constitute the human agency through which it must act.

CHAPTER XVI

THE INSTRUMENT OF DISPOSITION

As the use to be made of property after death depends upon the instrument of disposition executed during life, its character and the method of its preparation require a few words.

We have seen in a preceding chapter that the instruments most commonly employed are wills and deeds of trust or settlement. The former take effect only at death and are subject to change during life. The latter are primarily designed for making gifts to take effect during life and may or may not be subject to change. In other respects the instruments are quite similar; the forms of gift which may be made under each are in general the same, as also are some of the limitations on the power of giving. For present purposes, therefore, it will be more

convenient as well as more profitable not to attempt any further distinctions, but rather to direct our attention to the class of instrument most commonly used.

The first requisite to a satisfactory transmission of property is a properly planned instrument. The second requisite is a properly prepared instrument. The third requisite is the selection of proper executors and trustees. The first and third requisites are subjects of former chapters. The second requisite still remains.

"While yet I am alive let my will be made safe and sound; for I cannot repair it after death." This is usually the burden on the mind of the prudent man desiring to provide for the proper transmission of his property, and thus to fulfil his obligations to his family and to society.

Experience in the *ante-mortem* criticism of wills has shown that notwithstanding the obvious importance of such a writing about sixty *per cent* of wills drawn by lawyers contain some obscurity, flaw, or omission which

renders them, at least in some respects, unsafe or unsound. Among wills drawn by laymen the percentage of defective instruments is far greater

The popular notion that nothing is more simple than the preparation of a will is a fallacy. The fact is more accurately described by the words of Lord Coke, that: "Wills and the construction of them, do more perplex a man than any other learning." And as Professor Gray says: "In no civilised country is the making of a will so delicate an operation and so likely to fail of success as in New York."

There can be no doubt of the folly of a layman undertaking to draw a will. The only point on which there can be a fair difference of opinion is as to the qualifications of a lawyer to whom the task may be committed. On that point each person must judge for himself, remembering that in testamentary law, as in other branches of legal work, there are all grades of learning and experience from which to choose and that

lawyers like laymen are human and not infallible. Warren in his *Law Studies* says that a lawyer who undertakes to act in the preparation of a will is "bound morally as well as legally to possess a familiar and accurate practical knowledge of the leading rules applicable thereto." He certainly is required to bring to his task the utmost good faith, due diligence, and a high sense of professional duty. Virgil M. Harris, an eminent writer on wills and lecturer on testamentary law in the St. Louis University, in a recent address said:

> It is a fact that not one lawyer in ten can properly construct a will, except it be of the simplest nature, unless his experience in this line of work has been extensive and he has seen the practical every-day results of errors and faulty composition. Accurate will-writing is an art which comes from practice and experience and requires, in most instances, a thorough knowledge of the law. One of the strangest facts in legal history is that a great number of eminent lawyers have constructed for themselves defective wills; it means nothing more, however, than that their abilities did not lie in the direction of will-writing.

In preparing the most simple document

every person experiences difficulty in using the English language so as to convey his exact meaning beyond the possibility of a misunderstanding or double reading. In a will this difficulty is much increased. Most instruments are designed to take effect at the time they are written; not so in the case of a will. It does not become operative under conditions existing at the time it is made. It speaks only from death and must be made to fit the conditions that may then exist. In many cases it must also deal with circumstances of family and estate as they may arise from time to time after death during the lives of one or more persons.

A forecast of all contingencies which may arise in family or estate is no easy matter and to provide for them properly when foreseen is often a difficult task for the most skilful testamentary writers and the best lawyers sometimes differ on the legal propositions thus presented. Yet these are the problems which confront every person who undertakes the actual preparation of a will. Nevertheless

thousands of persons each year, with indifferent qualifications and unbounded confidence in their own ability, rush in where persons of experience fear to tread. Thus is fed the ever swollen stream of wasteful, malignant, and interminable litigation concerning wills.

CHAPTER XVII

INSURANCE OF WILLS

UNLIKE a deed or contract there is only one party to a will. It is therefore prepared from a single point of view and generally by one hand without the benefit of criticism from any adverse interest. After death, when it is too late to make the slightest change, it is for the first time subjected to the stress of scrutiny by others. From divergent points of interest with the greatest zeal, every possible ambiguity, flaw, or omission is then hunted out and the most is made of it.[1]

Some deem it wise, consequently, to indulge in a sort of insurance by requiring their legal adviser when drawing a will to submit to one

[1] For example the famous will of the late Mary Baker G. Eddy is at the present writing being subjected to this trying ordeal probably to be followed by litigation.

or more persons especially skilled in the preparation of such instruments a preliminary draft, or after execution, a complete copy of the will for an independent *ante-mortem* interpretation and opinion. In this manner a will may be subjected to as searching and critical an examination before the death of its maker as it is likely to receive after his death. Such an examination and interpretation by experienced minds fresh to the task, if properly done, should reveal any "weak spots" that may exist or demonstrate their absence. Indeed, such a test of any existing will is a wise precaution. It is peculiarly important where wills are more or less stale, have one or more codicils, or where strife is likely to be instigated after death.

CHAPTER XVIII

PROCRASTINATION, AN UNMIXED EVIL

It is unfortunate for persons even of small property to die without having set their worldly affairs in order. It is particularly unfortunate and a very common occurrence for persons of large means contemplating wise *post-mortem* uses of their fortunes to have their plans thwarted by untimely death. It is almost criminal for a man whose affairs are in an unsatisfactory condition to delay in making suitable provision for the *post-mortem* administration of his estate by committing it to proper hands provided with ample powers to meet such emergencies as may arise. Carelessness in such matters imposes unnecessary burdens and hardships. A few skilfully written words save much trouble and expense to the living, avert family disputes, and conserve the interests of all.

At no period in the history of the world has preparedness for sudden death been more appropriate than the present. In addition to natural causes incident to the stress of modern business methods all means of public and private travel, by land and water, have been accelerated to the last degree and even mechanical flight is at hand. No one can travel by rail or on a public highway at the modern rate of speed, or even as a pedestrian cross some of our thoroughfares, without occasion for serious thought of family and estate. Such thoughts, however, are useless unless followed by action—prompt action leading to a safe and sound instrument and a quiet mind.

PART II

Ethical Point of View

I

Principles which should Govern the Making of Bequests for Philanthropic Purposes

By

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A few suggestions are here offered intended rather to stimulate thinking than to formulate precise rules.

1. Gratitude toward persons or institutions that have exercised a markedly beneficent influence on one's own development: this point is too obvious to require elaboration. Gifts and bequests made to schools and colleges belong in this category. At the present day it may even be desirable to issue a warning against the lavishing of favours

upon one's own college to the neglect of other institutions that perhaps are more in need and equally deserving. Partisan loyalty should not obscure the claims of dispassionate philanthropy.

2. Special interest in those who follow the same calling. Benefactions under this head would have for their object to enlarge the opportunities and to remove the kinds of distress peculiar to those whose work in life is the same as our own. Physicians, lawyers, clergymen, artists, merchants, teachers, etc., have a special obligation toward their colleagues. Obligation corresponds to familiarity with needs: we know better the needs of persons in the same walk of life than those of outsiders; we know in the former case exactly where the shoe is likely to pinch; we can, therefore, act more wisely in providing means of improvement and relief. The endowment of chairs for the teaching of subjects not yet included in the curriculum of professional schools or insufficiently emphasised, travelling fellowships, special loan funds, may be men-

tioned as instances of what might be done in this direction.

3. Concentration, or selection of some principal object of benefaction. The principal object should be a cause or movement calculated to produce the greatest possible good in the uplifting of mankind. Different objects would appeal to different minds: economic reform will commend itself to some; to others, the improvement of the system of education; to others, movements intended to promote the national health; to others, missionary propaganda, etc. It should be remembered, however, that the individual, in selecting a special cause or causes to which he will leave a considerable portion of his wealth, is not morally free to follow mere prejudice or caprice, but that, regarding himself as the steward of a part of the capital of society, he is under obligation to seek earnestly for light and to select the channel into which to pour his gifts only after the most careful and disinterested investigation and reflection.

4. Contributing one's quota to the main-

tenance of the ordinary charities or philanthropies such as hospitals, institutions for orphan children, institutions which minister to the relief of the indigent, etc. Our civilisation has not yet reached the stage in which we can truly affirm that no human being is allowed to perish for want of the absolute necessaries of existence. Our municipal and state institutions are inadequate to cover the needs of the deserving; private philanthropy must step into the breach—and it is the duty of all who have the means to do so—to help in satisfying the primary needs of their fellows.

It may not, perhaps, be superfluous or presumptuous to add the following brief counsels: Do not wait till the hour of death is at hand, but give, if possible, during your life so that you may participate in the administration of your benefactions and may receive the education, the increase of insight into social needs, which comes of such participation.

Exercise foresight in providing for the sub-

stantial fulfilment of your wishes, but do not impair the freedom of action of those who come after you. See to it that they carry out the spirit of your intentions, but do not impose the weight of the dead hand on posterity.

Finally, in providing for children and those near of kin, be just to their higher interests as human beings, as well as to their material interests. Do not, therefore, by loading them with excessive wealth, exempt them from the salutary necessity to make good their place in society by independent efforts: leave them enough to put them into conditions which will enable them to deploy their energies to the best advantage, but do not paralyse the motives which prompt to the putting forth of energy.

II

The Ethical Justification of an Inheritance Tax

By

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There is little doubt that the modern state will limit the power of bequest. Objections based on theories of personal liberty, and practical objections based on law and constitution, will all be met bravely, resolutely, sanely. It is difficult to see that anything better on this subject could be said than has already been said by Mr. Andrew Carnegie. His *Gospel of Wealth* remains the classic upon the right of the community to take back part of the dead man's wealth for works of public service. Lawyers may for a time hold

that his proposals are unconstitutional and rich men's sons may talk about "spoliation" or "confiscation" or something else of the same character. But the good sense of future generations will find the way.

In formulating the ethical justification of this action by the community, the facts of re-action and of inter-action must be borne in mind. We are one body. The enterprise, the courage, perhaps even the self-sacrifice and devotion of the rich man contributed much to the prosperity of the community. He could not build a railway without opening up a new country, creating new values, making many persons less poor and some rich. He could not invent, manufacture, transport on a large scale, or by his own labours accumulate wealth in any way recognised as legitimate by the standards of our time, without serving a thousand interests besides his own. But, on the other hand, he could not have done it without the conscious and unconscious co-operation of the community. "Unearned increment" much of his wealth, under any

conceivable conditions, must remain—increase, that is to say, which has gone on by night and by day, through the natural growth of population, the development of city and country, and the movements of great masses of human beings obeying the laws of their growth. He is not to be blamed for taking advantage of these factors. On the contrary, in taking advantage of them he has served the material interests and perhaps the moral interests of the race. And he is entitled to the proper rewards of his industry and insight, his inventive skill or organising genius. Yet while it is right for the community to pay him or to allow him to pay himself, it does not follow that his son, or his son's son, or his sister, or his cousin, or his aunt, who has done nothing but arrange to get born under favourable conditions and has made a prudent selection of parents beforehand, is entitled to the same payment. The "heir" has done nothing: why pay him on the same scale? And as part of the wealth had to be contributed, in the nature of the case, by the social organism

whether the community willed it or not, now that the nature of the case permits a redistribution, the community is entitled to demand a share of the wealth it created.

In a word: there are two parties to the accumulation of that wealth, the man and society. The man has had the enjoyment of it, society hitherto assenting. The "heir" has had nothing to do with the creation of it, and society is entitled to take back at least a part of that which it created.

It should be added that in many cases this loss will be a great gain to the "heir." He will not be the loser by it. He may be a better man and a stronger man because he is his own man as God made him and not merely his great-grandfather's great-grandson. He is not to be envied if inherited wealth makes of him an effeminate creature, idle, luxurious, vicious; nor to be pitied if, losing millions, he finds his manhood. On such a view society is entitled to protect itself against him and the like of him. It is not good for America to produce in the homes of the rich

an aristocracy of wealth imitating the characteristic vices of the European aristocracies, in the hour when they are imitating the characteristic vices of the Renaissance. A severely progressive inheritance tax might tend to diminish the "wine, women, and song" type of life—but it might add to the number of good men in the world.

New York, March 1, 1911

III

Ethical Obligations of the Testator

By

James J. Fox, D.D.
Professor of Ethics in the Catholic University of America

The right of disposing of one's property is looked upon by Catholic moralists as the complement or crown of the right of private ownership; and consistently with their uncompromising defence of the right of property they advocate the largest reasonable liberty for the possessor who is making his will. But because this latter right springs from the right of ownership, it is evidently subject to those limitations which restrict that of ownership. Hence to determine what obligations are incumbent on a testator we have to recall

what are the restrictions which limit his right as owner or proprietor.

Now Catholic ethical teaching has never tolerated the theory that the owner may do absolutely as he pleases with his own; it is one thing to possess property, another thing to use it as one wills. We do not acknowledge the *jus abutendi.* Although the owner's right is full and complete as against his fellows, yet, with respect to God, who alone is absolute Proprietor, his right is but one of stewardship or administration. He is, in the first place, obliged to support his family in a manner suitable to their condition; and this obligation bears not only on his administration of his goods during life, but it also extends to his testamentary disposals. In the well known encyclical on the conditions of the working classes Leo XIII has succinctly expounded this duty and the reason for it:

> It is a most sacred law of nature that a father should provide food and all necessaries for those whom he has begotten; and similarly nature dictates that a man's children, who carry on, so to speak, and con-

tinue his own personality, should be by him provided with all that is needful to keep themselves honourably from want and misery amid the uncertainties of this mortal life. In no other way can a father effect this except by the ownership of lucrative property which he can transmit to his children by inheritance.

But, let us suppose that having made adequate provision for his family and for all other private claims upon him, whether they arise from strict justice or be of a less rigorous character such as spring from friendship, gratitude, generosity towards those who have served him, etc., a testator still has a surplus to dispose of. May he do what he pleases with it, or even follow no guide but caprice in the matter? To answer this question we must again recall the restrictions upon the right of ownership; and here, too, the principles have been adequately expressed by Leo XIII in the document already quoted.

Man should not consider his outward possessions as his own, but as common to all so as to share them without hesitation when others are in need. When what necessity demands has been supplied and one's standing fairly taken thought for, it becomes a duty, not of justice (except in extreme cases), to give to

the indigent out of what remains over. It is a duty not of justice, but of Christian charity, a duty not enforced by human law; but the laws of men must yield to the laws and judgments of Christ the true God who in many places urges on His followers the practice of almsgiving.

After quoting the well known Gospel texts relative to the matter the Pontiff sums up:

Whoever has received from the divine bounty a large share of temporal blessings, whether they be external and corporeal, or gifts of the mind, has received them for the perfection of his own nature, and at the same time that he may employ them as the steward of Providence for the benefit of others.

The Gospel term almsgiving is to be interpreted largely and with reference to the social conditions in which we live. The relief of suffering and indigence was during the time of Christ almost the only general way in which paternal benevolence could find a field for practical beneficence. So Christ when urging the duty of fruitful brotherly love points out almsgiving as the channel which its activity is to take. Evidently, however, the spirit which prompts almsgiving and

other means of relieving actual distress or suffering is also satisfied by the devotion of superfluous wealth to such purposes as have for their object the reformation of social institutions, conditions, or morals, which are the widely active causes of much poverty and suffering.

IV

Charity and Religion

By

David H. Greer
Bishop of New York

What is true charity? Not the gift of a dole or an alms; that form of charity is fast becoming obsolete. True charity consists in the gift of one's self. No man can reach the full stature of his personality except through others. Living alone and standing apart from others, he can never show what he is, but only what he is not. The people about us to-day are not really other people, they are ourselves, in whom we become alive, and reach and find ourselves; and in whose features, masked and disguised by suffering, need and ignorance, foolishness and want,

we shall find, as the mask is lifted, the features of ourselves.

Then again charity is religion, or the handmaid of religion. Religion and charity have always been associated. Charity is the offspring of religion and of the Christian religion in particular. This is not a theological statement, open to question; it is a statement of fact, which every student of history knows and is familiar with. For while it is true, as Mr. Lecky tells us, that a few pagan examples of charity have indeed descended to us, it is also true that they are exceptional and few, and that when Christianity appeared charity became the rule, and was regarded, at least by the Christian world, as a "rudimentary virtue." The motive which inspired this early Christian charity was not always, as is sometimes alleged, the hope of winning another world. That may have entered into the motive, and doubtless did a little. For motives, even the best, are sometimes mixed and alloyed with personal considerations. But the motive which inspired charitable

ministrations in the early Christian world was in the main the impulse and the desire to minister to human life, because it was human life which Jesus Christ had declared to be, even in its poorest and most degraded forms, of such transcendent worth.

It has been said that the great social struggle of to-day is between the "haves" and the "have nots." Mr. Benjamin Kidd, however, has pointed out that that is not the case, but that it is between the selfish "haves" and the unselfish "haves." That is where the battle line is drawn. Those are the persons who are fighting the battle out for the redemption of modern society. There are many conspicuous examples upon the better side: men of great possessions, who realise their great and exceptional opportunities for usefulness and who are trying as best they can to meet them. But the consciousness of any kind of gift, physical gift, mental gift, the gift of money endowment, brings always, I think, great temptations with it. The man who has within him a power which

lifts him up above his fellow men will see more things to do, not only good but bad, not only right but wrong, than they can possibly see, and he will be tempted to do them. He may not yield to the temptation, but he sees it, and will flush and burn with it at times. The consciousness of his power, of his gift, will have the effect to drive him into the wilderness of integrity and virtue and purity, struggling with the evil voices. Nevertheless there are many men of very large and important affairs who are modest, simple-minded, and unassuming, caring most of all, not for worldly honours or worldly decorations and flatteries which people are always ready to give them, but for the sanction of their conscience and the approval of their God, to Whom they feel they must give an account at the last of the great and important trusts which have been committed to them.

V

The Hypnotic Power of Wealth

By

Newell Dwight Hillis, D.D., Lit. D.

Pastor, Plymouth Church, Brooklyn

Our country now has one hundred millions of people and one hundred and thirty billions of property. In 1650 we had twenty-five thousand people, living on the edge of the forest. This means that in two hundred and fifty years our population has multiplied four thousand times. Suppose now that in the next two hundred and fifty years we increase not four thousand times, but only four times, we would then have a population of four hundred millions. But our wealth has grown far more rapidly than our population. One hundred and thirty billions expressed in terms

of pastures, meadows, harvests, forests, mines, herds, flocks, towns, and cities, represents a sum almost immeasurable. As yet we have but scratched the surface of the soil. This year we will during twelve months produce fifteen billions of dollars through harvests, manufacturing, and shipping. The best financial experts tell us that we are soon to have five hundred billions. The streams of wealth are coming in like a flood.

One of the results of this flood of wealth is the choking of the ideal, and the smothering of the great convictions of the fathers. As never before wealth is proving its hypnotic power. Our sons and daughters are being charmed by the glitter of dollars as young sparrows by the glitter of snakes' eyes. Wealth that was intended as the almoner of bounty toward the home, the school, the library, the gallery, the reform, the church, is becoming an end in itself. Multitudes are living toward rich foods, soft raiment, and gorgeous equipage. As property increases, some men decay.

That food is ours that can be digested—no more. At the peril of life itself man eats more stalled ox, drinks more wine than he can digest; the excess is poison. That property is ours that we can digest, use, and convert into terms of personal life and social service. The man who is rich on the outside and poor on the inside is a pauper by way of pre-eminence.

The great question of the hour is, how shall men administer their wealth—before death, by making every guinea serve their fellows—after death, by directing it into the channels that enrich the state, and nourish democracy, morality, and the highest manhood? The death of a multi-millionaire in the West, who recently left a hundred millions in such a way as to build up his name, and who, on the publication of his will, received only criticism and shame, until those who honoured and loved him are always now on the defensive, offers warning and even suggests terror and alarm to men who hoard here, and have not made their gold to serve their fellows hereafter.

That man is a benefactor of the republic who can show the millionaire how to make his wealth run through the generations like the Rhine that carries blessing as it turns mill-wheels and waters innumerable fields, rather than like the Dead Sea, that receives all, gives nothing, and with its salty death becomes the symbol of all miserly souls.

VI

A Benefaction Preliminary to all Others

By

F. de Sola Mendes, Ph.D.

Rabbi, West End Synagogue, New York

As to the *post-mortem* benefactions of millionaires, the field of human activity which has my approval, as a candidate for the benefactions of either the living or the dead, is that of scientific medical exploration. I can conceive of no more useful application for the opportunity, the power, the enthusiastic energy, which would be inspired by large funds at disposal. The New Medicine, with its vast and ramifying revelations of germ-activities wholesome as well as baneful, seems to cry aloud, in the name of suffering

humanity, for deepest study and widest application.

Not that I would thus have human beings essay to "eat of the Tree of Knowledge" that they may live for ever "and not die," but the sound bodies and constitutions with which God created them have been sorely undermined by centuries of excess and honeycombed by neglect and disease. To build up new health; to restore vitiated constitutions, by strengthening all good germs and destroying all evil ones, is, in my humble estimation, a prior necessity to any and all schemes of intellectual, eleemosynary, commercial, or political philanthropics. I would that the benefactors of great wealth might think of this before ordaining their monetary contributions to human welfare.

The first duty of such men naturally is to conserve the comfort and welfare of their immediate descendants by bequeathing to them just so much as is wise, proper, and non-enervating. After that, the care of the greater family of humankind should come, in any

form or fashion that in the wisdom of men can be discerned as promising the greatest good to the greatest number. And what fulfils this ideal better than the medical research to which I have endeavoured to point?

I hold no brief for medicine, my profession is a different one; perhaps just therefore my inmost conviction may be entitled to greater attention.

VII

Prolonged Usefulness

By

Henry White Warren, D.D., LL.D.
Bishop of the Methodist Episcopal Church

The virile Anglo-Saxon race can plan more than it can execute. Hence a million persons, mostly manual labourers, come from the older world annually to help execute our large plans. We carry the artisan's wages up to five or ten dollars a day instead of ten cents a day as in indolent India, where there is little to be done except to raise a little cotton for little clothing, a little rice for too little nourishment. We do this to get our large plans accomplished.

As the years grow fewer we feel that there

is more to be done for God and His children than our time and means can achieve. So felt the Christ. Hence He made his will: "Not as the world giveth give I unto you? Peace I leave with you. *My* peace I give unto you." Legacies of infinite preciousness! It is His own influence prolonged. Nearly every person can follow His example and thus prolong and even eternise his influence.

This should be done, first, for its influence on the giver. It brings great serenity and satisfaction to one's days of declining vigour to feel that his work will go on through many and perhaps all coming years. To give something to God makes one feel allied to Him who gave all for us. Second, it should be done for the benefit of one's heirs. It gives them a perception that the one they have occasion to revere and love had higher aims than mere money getting. These gifts to the public good should be freely canvassed and made known to all concerned while the testator is still alive and in health. There will be no contest then. The right to dispose of property

is recognised while the earner and owner is living.

Sometimes property may be given to legatees in trust for certain clearly defined benefactions. How many there are: help to the sick; endowments of hospital beds; rewards in schools; small endowments to faithful servant girls on their marriage; a watering trough, or drinking fountain; for the best acre of corn, or the daintiest front yard. On rising higher there are endowments of many kinds to educational institutions; departments in libraries; for proficiency in particular or general studies resulting in more study at home, or by fellowships abroad; lectureships or professorships.

Take an illustration of *a wise investment.* When Professor McCabe of the Ohio Wesleyan celebrated his semi-centennial of teaching, some one calculated the number of years he had preached by his pupils. Some had preached forty years and later pupils ten or two. The sum total was over six thousand years. Suppose some one had endowed that

chair and thus supported that professor for all those years and all the fifty years to follow. It would have been a wise investment. Such opportunities are still open.

Then of course there is the world-wide field of missionary endeavour. This is every kind of good to the most needy, hospitals, dispensaries, schools, medicine, arts, churches, and salvation to those who have none of either. This not only blesses men but it glorifies—makes glorious—God. To have produced such children of world-wide benefaction reflects honour and glory upon the Father.

VIII

The Higher Law in the Use of Wealth

By

David G. Wylie, Ph.D., D.D.

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The maxim, "Wealth is power," still stands and holds good; indeed, never more so than in this age, throbbing with energy and thirsting for gold! Wealth has a charm for the average man, because it spells pleasure, place, power; and, in the minds of many, if not of most men and women, is the synonym of influence in all the walks of life. Because money is so powerful, it is not strange that many who have become rich have a passion, a greed for more, and willingly bow and worship before the golden calf.

Wealth has its uses and abuses; but its

abuse is no argument against its use or possession; and the "power to get wealth" is a talent to be used. We must scorn any system of socialism, so called, Christian or other type, that makes the accumulation of wealth a sin or crime. It is not the possession of vast fortunes that we find fault with, or complain of, but the wrong use of wealth in life or after death.

The proper use of accumulated wealth in life and its *post-mortem* disposition is attracting more and more attention from the possessors of great fortunes and from publicists, thinkers, and writers. This is a gratifying fact; for it is certain that if people possessing wealth are led to think seriously respecting its right use in life and its wise *post-mortem* disposition, many serious problems will be solved.

Possessors of wealth have a mighty influence in their hands for good or evil. If used wisely, wealth makes families united, happy, contented, prosperous, and influential; advances art and education; improves the moral condition of the community and hastens the hour of

universal brotherhood. On the other hand, wealth used unwisely, unjustly, wrongly, becomes a disturbing element in home life, and often makes members of families and relatives oppose and hate each other. This being so, it follows that great care should be exercised in the present day use of wealth and in the making of wills which dispose of accumulated possessions.

This article is written from the moral and religious point of view; and on the face of it, the proposition that parents should avoid discrimination and favouritism in their distribution of wealth to their children in life and its disposition after death, holds good now, as in the past. Wise parents should learn lessons from sacred and secular history which shows that favouritism and discrimination have produced tragedies in many families.

It is possible that some objector may seek to call a halt in this argument by asking the question, Have not fathers or mothers, if in possession of their faculties, the legal right to dispose of their possessions as they please:

to do what they will with their own? Yes, the legal right to throw their money into a river or to make a bonfire of it; but the right to dispose of wealth should be used with a fine discrimination. A father may have the legal right to disinherit all his children except the favourite around whom his affections cluster; but the bestowment of wealth upon one child, rather than equally and justly upon all, provided the other members of the family have not forfeited, by their conduct, the respect, confidence, and love of their father, is sure to break up family unity and to produce malevolent feelings. This being the case, a parent has no moral right to discriminate against his children in favour of any particular one who, on account of a fortunate disposition, or by skilful methods, has won the affection of his father or mother. In the bestowment of favours in life and, by will, after death, parents should be guided by the "higher law."

What father or mother worthy of the name, would be willing to see the members

of his family wounded in their feelings, made jealous, treating each other like wild beasts because of his unjust discrimination in the bestowment of affection or money? What wise, sane, just father does not shrink from the thought of his children standing about his death-bed or his grave feeling that they have been treated unjustly and burning with resentment? The difficulty seems to be that many people fail to understand that the bestowment of gifts in life, or by will, upon one member of the family is a revelation of affection for one as against other members of the family; and few things are more certain to disrupt families than the suspicion, even, that a parent loves one child better than another. When it becomes evident that a parent has more affection for one child than for another, jealousy is sure to break out and to burn hotly among the members of the family. Really, this seems to have been the difficulty in the case of the old patriarch, Jacob, which bulks so largely in the book of Genesis. That "coat of many colours" played havoc; for

the other brothers immediately felt that Joseph was his father's favourite and they resented it. It is quite possible that there were other indications that Jacob had special affection for Joseph which may have been manifested in many ways; by his desire to have his favourite son near him and to have him well provided for, even at the expense of his other sons. The equal distribution of affection and fortune kindles love in the hearts of children; the unequal distribution kills love and kindles resentment! History shows that this statement is a hard, cold fact!

A man having made provision for his children should treat his wife in the same just and equable manner. Some men, in their wills, fail to make adequate provision for their wives. Others dispose of their estates in such a way as to put mothers largely in the power of their children; others, still, in such a manner that the mother's power over her children practically disappears. It is thus apparent that justice and common-sense should control men in the making of their wills.

Having provided for his wife and children, it is proper and right for a man, in case his estate is ample, to think seriously of the demands of charity upon his fortune. Men of wealth are under obligation to support the great organisations and institutions of society by a wise use of their money. In doing this one should be guided, not by vanity, or for the purpose of exploiting his name, but by a desire to create an influence which will be for the good of the community.

And here it may be worth while to suggest that a general bequest to charity is not usually so beneficial as one for some specific purpose; as for example, the alleviation of a particular form of disease, or the establishment of a home for unfortunate people, or the assistance given to a hospital which deals with some specific form of work; in a word, some need which the testator's experience has shown not to have been met by existing organisations, or not fully met.

Summing up, the conclusion is evident that parents should be just to their children in their

gifts during life and in their *post-mortem* benefactions; that men should be just and fair to their wives by making that provision for them which will secure their comfort and leave them free from the possible domination of their children; that wills should be made only after careful consideration, and with the assistance and under the direction of a wise legal adviser; and that those who have fortunes to dispose of should see to it that the institutions which they seek to create or assist are worthy and such as will advance the highest interests of their fellow-men.

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